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February 29, 1996

Honorable Bruce A. Reeves, Assessor
County of Monterey, Courthouse
P.O. Box 570
Salinas, CA 93902

ATTN: Mr. Tom Thayer, Supervising Auditor-Appraiser

RE: Taxable Situs DV536405 "Islander"

Dear Mr. Reeves:

In your original letter of October 26, 1994 to our Assessment Standards Division you asked our opinion on the taxability of the referenced vessel. The wooden vessel, *Islander*, of 10 gross tons, built in Sturgeon Bay, Wisconsin in 1937 and currently documented by the United States Coast Guard as a recreation vessel, homeport of Philadelphia, PA., is owned by the Trade Winds Enterprises, Inc., a Delaware Corporation, domiciled in Wilmington, DE. The vessel arrived in Monterey County in July 1990, has been birthed at Moss Landing Harbor and used as a pleasure craft since arrival.

In his letter of November 21, 1994 Mr. Earl Kirkman, for Tradewinds Enterprises, Inc., contends that the vessel is subject to the homeport doctrine for purposes of taxation and relies upon *Olson v. San Francisco*, 148 Cal. 80 (1905) as legal authority. In that case the vessel was continuously employed in international waters but was held to be subject to property tax at its home port of San Francisco because it had not acquired an actual, physical situs at another location. He also points out that in 1991, 1992 and 1993 he has paid penalty fees for

temporary berthing at Moss Landing which indicated that the Islander is a temporary vessel there. Finally Mr. Kirkman has requested any governmental authority that would authorize the taxation of this vessel.

In your view the *Olson* case does not apply to pleasure craft and even if so, the holding of *Smith-Rice Heavy Lifts, Inc. v. Co. of Los Angeles*, 256 Cal. App. 2d 190 (1967) states that the homeport rule is inapplicable whenever the vessel acquired a permanent situs within a different jurisdiction. However, you do ask our opinion whether the stay of Islander constitutes a change of situs.

Although *Smith-Rice* states the principle of law it is not very helpful on the precise facts because the assessor waited for five years after the vessel arrived in the jurisdiction before making the assessment. The opinion does not state any reason or consequence of the delay. Similarly in *Continental Dredging Co. v. Co. of Los Angeles*, 366 F. Supp. 1133 (1973) the Assessor of Los Angeles County again waited five years before making the assessment without stating any reason for the delay. Fortunately the most recent of these cases provides the answer to your inquiry. In *County of San Diego v. Lafayette Steel Co.*, 164 Cal. App. 692 (1985) the Tradition, a documented commercial fishing vessel, arrived in San Diego in November 1977 and moored for repairs. The San Diego County Assessor did not wait and made an assessment as of lien date 1978. The court held:

Lafayette contends the Tradition did not have a tax situs in San Diego and the County lacked jurisdiction to assess the taxes. It is true the vessel was registered in Sitka, Alaska, and the owner, Lafayette, was a foreign corporation not domiciled in San Diego. However, the taxable situs of a vessel is not determined by the designation by the owner of a home port. If the owner locates the vessel in a port other than that designated under conditions suggesting a permanent base, the situs of the domicile yields to the second port and the vessel is subject to the taxing power of another entity. (citations) The determination whether the Tradition is subject to County tax depends upon the existence of

sufficient contacts between the County and the vessel to satisfy due process, i.e., use and employment within the jurisdiction (citation) and the opportunities, benefits or protection afforded the vessel by the County (citation). Here, Lafayette did not pay 1978 tax on the vessel in any jurisdiction. The Tradition except for a one-month round trip voyage to Costa Rica was moored in San Diego harbor from November 1977 at least through December 31, 1979, and was sold through a San Diego bank escrow in February of 1979.

The vessel was used and employed in the County in the 1978 tax year and was entitled to the benefits and protection afforded vessels moored in the harbor. Substantial evidence supports the court's conclusion the Tradition was subject to the County's 1978 unsecured property tax. 164 Cal. App. 3d 693 and 694.

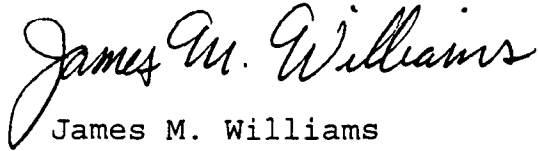
In our view this case is almost a perfect match with the facts surrounding the Islander; it is also the most recent decision of the California appellate courts. Base on the holding of **Lafayette** and the dates involving the Islander we agree with your current view that the vessel was first subject to assessment by Monterey County on lien date 1991.

For Mr. Kirkman's benefit, in response to his request for law, other than cases, we would refer him to the California Constitution, Article XIII, Section 1, which clearly provides that all property (within the jurisdiction of the state) is taxable. Section 14 of the same article more specifically provides that property taxed by local government shall be assessed in the county in which it is situated. California Revenue and Taxation Code, Section 1138, requires that vessels documented outside of this State and plying in whole or in part in its waters, the owners of which reside in this State, shall be assessed in this State. If in regard to foregoing statute he should assert that the owner is Trade Winds Enterprises, Inc., we have also noted that it has a presence or is present in Felton,

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California. If Mr. Kirkman would like a further review of our conclusion, we would refer him to the discussion at **Section 7:09. Ships and Boats. Taxing California Property 3rd Ed. Ehrman and Flavin, Volume 1.**

Very truly yours,

A handwritten signature in cursive script that reads "James M. Williams". The signature is written in dark ink and is positioned above the printed name and title.

James M. Williams
Staff Counsel

JMW:jd

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cc: Mr. Jim Speed, MIC:63
Mr. Dick Johnson, MIC:64
Ms. Jennifer Willis, MIC:73
Mr. Earl Kirkman